

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

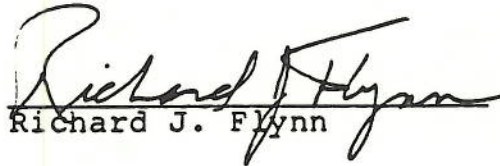
ASSOCIATION OF AMERICAN RAILROADS, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 76-1353
)	
DOUGLAS M. COSTLE, Administrator, Environmental Protection Agency, et al.,)	
)	
Respondents,)	
)	
The State of Illinois,)	
)	
Intervenor.)	
)	

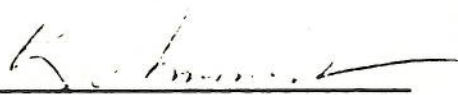
AGREEMENT TO DISMISS

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, Petitioner, Association of American Railroads, et al., Respondents, Administrator of the Environmental Protection Agency, et al., and Intervenor, State of Illinois, hereby file


this Agreement of Dismissal to dismiss this action. Each party shall bear his own costs.


Respectfully submitted,

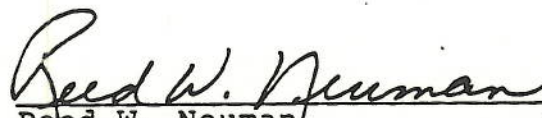

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ASSOCIATION OF AMERICAN RAILROADS,
et al.,

Petitioners,

v.

No. 76-1353

DOUGLAS M. COSTLE, Administrator,
Environmental Protection Agency,
et al.,

Respondents,

The State of Illinois,

Intervenor.

STATUS REPORT

Pursuant to Section 17 of the Noise Control Act of 1972 (Act), 42 U.S.C. §4916, on December 31, 1975, the Environmental Protection Agency (EPA) promulgated a final regulation setting noise emission standards for railroad locomotives and railcars operated by interstate carriers. 41 Fed. Reg. 2184. The Association of American Railroads (AAR) subsequently brought suit to require EPA to publish further noise standards for railroads. By decision of this Court on August 23, 1977, 562 F.2d 1310, Respondents were directed to promulgate additional standards covering railroad "facilities and equipment."

On September 24, 1979, this Court granted Respondents' Motion For An Enlargement Of Time For Promulgating Final Standards. Respondents requested and received an extension until January 23, 1980, for publication of standards applicable to specific sources of railroad noise, and an extension until January 23, 1981, for publication of standards for overall limits on railroad noise (hereafter referred to as "property line standards"). The deadline for property line standards was further extended to May 26, 1981, by this Court's Order of February 13, 1981, and to November 26, 1981, by this Court's Order of June 26, 1981.

EPA promulgated the final standards for specific sources of railroad noise on January 4, 1980. 45 Fed. Reg. 1252. EPA also has published a Notice of Proposed Rulemaking for property line standards. 44 Fed. Reg. 22960-72 (April 17, 1979).

On September 30, 1980, EPA published a Notice Of The Availability Of New Data And Advance Notice Of Intent relevant to the property line standards, 45 Fed. Reg. 64876-77, and received in response extensive comments submitted by Petitioner AAR which, inter alia, raised the possibility that further standards might not be needed. AAR argued that the standards promulgated to date constitute complete and effective compliance with the statutory mandate for regulation of rail facility and equipment noise emissions "achievable through the application

of the best available technology taking into consideration the cost of compliance" (42 U.S.C. §4916), and additionally questioned the feasibility of, and the necessity for, the proposed property line standards for railroad noise.

Following discussion of these matters with the parties and review of the standards currently in effect, Respondents have concluded that no further standards are necessary to regulate rail facilities and equipment. The standards already promulgated by EPA, including those in response to this Court's order, encompass numerous standards covering major sources of railroad noise: standards for locomotives manufactured before 1980, locomotives manufactured after December 31, 1979, and rail cars, 41 Fed. Reg. 2184; and standards for locomotive load cell test stands, switcher locomotives, retarders, and car coupling operations, 45 Fed. Reg. 1252. No petitions were filed to review the standards promulgated after the Court's decision in this case.

Respondents believe that the cumulative effect of these standards, which were based on the noise abatement achievable through the application of the best available technology taking into consideration the cost of compliance, effectively regulate both railroad equipment and railroad facilities. The standards promulgated to date cover the major sources of noise from railroad equipment which in turn generate a large proportion


of the noise emissions from rail facilities. Since the cumulative effect of regulating equipment used within railyards is also to regulate to a significant degree noise emissions from rail facilities, the parties agree that it is unnecessary for EPA to establish further property line facility emission standards specifically for railyards.


In consideration of these facts, EPA intends to withdraw its proposal to promulgate a property line standard for rail facilities. Respondents agree with Petitioner AAR that EPA has already effectively regulated railroad "equipment and facilities" in a manner "consistent with the customary usage of the phrase in the railroad industry," 562 F.2d at 1321, and in a manner consistent with the criteria contained in Section 17 of the Noise Control Act, and that national uniformity of treatment is effectively assured as the Federal standards become effective.

For the above-stated reasons, the parties agree that EPA has satisfied the Order of this Court directing the


promulgation of railroad noise standards and accordingly
have agreed to dismiss this case.

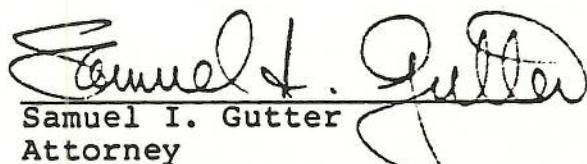
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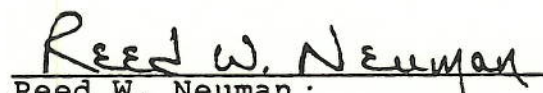

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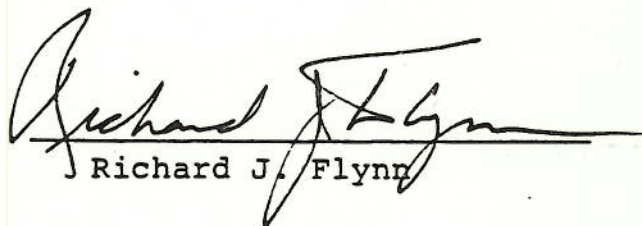

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CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of November, 1981, served a copy of the foregoing executed Agreement To Dismiss and Status Report upon all parties of record.


Richard J. Flynn